Editor's note: 80 I.D. 698

RUTH E. HAN

IBLA 73-337 Decided October 31, 1973

Appeal from decision by District Manager, Bureau of Land Management, Malta, Montana, rejecting a grazing lease application.

Affirmed.

Grazing Leases: Generally ! ! Grazing Leases: Preference Right Applicants

An owner of lands contiguous to federal lands is not a qualified applicant for the purposes of a section 15 grazing lease preference application when the nonfederal lands, which are the basis of the preference, have been leased to another party who has complete control over the livestock operation conducted thereon.

13 IBLA 296

Administrative Practice ! ! Contracts: Generally ! ! Courts ! ! Grazing Leases: Applications

Remedies for alleged breach of a private agreement between parties who have conflicting grazing lease applications must be sought in the courts, not in the Department of the Interior, which has no jurisdiction over such matters.

Grazing Leases: Applications ! ! Grazing Leases: Preference Right Applicants

As the regulations pertaining to section 15 grazing leases now provide that a qualified applicant is one who is in the livestock business and has a need for the grazing use of the federal land, an applicant who owns lands contiguous to federal land but fails to show she is in the livestock business and needs the federal land for grazing purposes is not qualified, and her application is properly rejected for that reason.

13 IBLA 297

Grazing Leases: Generally ! ! Rules of Practice: Appeals:
Hearings ! ! Rules of Practice: Hearings

An applicant for a section 15 grazing lease has no statutory or regulatory right to a full evidentiary hearing before an administrative law judge; a hearing on issues of fact may be ordered by this Board in its discretion, but a hearing will not be ordered where the applicant does not allege the existence of facts which, if proved, would entitle her to the relief sought.

Winchester Land and Cattle Company, 65 I.D. 148 (1958), and E. W. Davis, A-29889 (March 25, 1964), no longer followed in part.

APPEARANCES: Richard M. Han, for appellant.

OPINION BY MRS. THOMPSON

Ruth E. Han has appealed from a decision by the Malta, Montana, District Office of the Bureau of Land Management, dated January 24,

1973, which rejected her grazing lease application in its entirety, on the basis that she was not a qualified applicant; the decision granted the conflicting application of Robert Darlington, whom the District Office found to be a qualified applicant. The applications were filed for leases under authority of section 15 of the Taylor Grazing Act, as amended, 43 U.S.C. § 315m (1970).

The lands in conflict comprise about 2,500 acres in Chouteau County, Montana. To briefly review the recent use of these lands, we note that on February 6, 1960, a 10!year grazing lease was issued to Mrs. Han on the basis of an application indicating ownership of 200 cattle. In 1966 or 1967, however, the Han cattle were sold. After two years of non!use the use of the lease was sublet to another party.

When the 10!year lease expired, applications were accepted and portions of the lands originally leased by Mrs. Han were leased to Mr. Darlington, the owner of neighboring preference lands, and to a third party. Although Mrs. Han then had no livestock, Mr. Darlington's application for the remainder of these lands was rejected and Mrs. Han, because of her historical use and the more integral relationship between her preference lands and the section 15 lands, was given four months either to re!enter the livestock business or lease her preference lands to a qualified applicant.

Within four months Mrs. Han leased her preference lands to Mr. Darlington for a two ! year period. She then executed an assignment of her federal lease 1/ to Mr. Darlington as well, with the assignment of the federal lands to expire at the end of 1972 along with the lease of her preference lands.

Negotiations failed to produce a signed renewal of the private land lease, so it and the federal grazing lease expired October 30, 1972. Thereafter, applications were accepted for a new lease to the federal acreage involved; Mr. Darlington and Mrs. Han were the only applicants. In the decision being appealed, Mr. Darlington was granted a lease for the acreage, and Mrs. Han's application was rejected because her application showed she controlled only two horses. The District Manager determined she was not a qualified applicant under 43 CFR 4121.1-1(a), which requires that the applicant be engaged in the livestock business, have a need for the grazing use of the land, and be a citizen of the United States.

Mrs. Han's appeal does not assert that she is actually in the livestock business or that she has a need for the grazing use

1/ While Mrs. Han controlled her preference lands at this time, she had no livestock. Thus, the granting of the lease under these conditions was based on the assertion in her application that she would take in livestock on gain or shares, as well as historical use and the potential isolation of some of her base lands if someone else controlled the federal lands. The validity of this lease is not at issue here.

of the land. The appeal indicates in this regard only that her ranch has greatly depreciated in value because of the decision. Her appeal also asserts that her application was unjustly rejected because Mr. Darlington failed to file (and sign) the extension of their private land lease agreement. She requests a hearing for the purpose of reversing the decision and granting her application.

Mrs. Han's argument is apparently based on the assumption that the lessor of preference lands, on which the lessee is conducting a livestock business, is in control of these preference lands for the purpose of a section 15 lease application. Only under such an assumption would the failure of Mr. Darlington to sign and file the renewal lease affect her status as an applicant for a section 15 lease.

However, this argument is based on a misunderstanding of the regulations governing section 15 applications. Regulation 43 CFR 4121.2-1(c)(1) states that priority in issuance of leases will be granted to "qualified applicants * * * who are the owners, lessees, or other lawful occupants of contiguous private lands * * *." In order, however, to be a qualified applicant one must, inter alia, be engaged in the livestock business. In Orin L. Patterson, 56 I.D. 380, 381 (1938), the Department construed section 15 of the Taylor

Grazing Act to "contemplate the awarding of preference rights not merely to owners but owners who are occupying and using the contiguous lands for the grazing of livestock." The decision went on to hold that the lessees who ran the grazing operation on the private lands were the parties entitled to a preference right to the contiguous federal lands. Id.

43 CFR 4125.1-1(i)4 partially codifies this rule:

> The grazing lease will be terminated in whole or in part because of loss of control by the lessee of non!Federal lands that have been recognized as the basis for a grazing lease.

Thus the phrase "lawful occupant of contiguous lands," as used in section 15, does not include the owner of such lands who has divested himself of control over the grazing operation on such lands. Laurence A. Andren, 7 IBLA 14 (1972).

The lease of preference lands involved here does not contain a clause specifically regulating the lessor's right of possession or entry, but appellant did relinquish control over the grazing operation and waive any liability for accident or loss to livestock, personnel or equipment occurring on the leased lands. A lease under such terms amounts to divesting oneself of control of the

land for section 15 purposes. Laurence A. Andren, supra. Thus, if the lease of her private lands had been renewed on the same or similar terms, Mrs. Han would not have been a qualified applicant for this reason.

If Mrs. Han feels that Mr. Darlington breached an oral agreement to renew the preference lands lease through "fraud or inadvertence or neglect," as contended in her appeal, she has chosen the wrong forum. Remedies for alleged breaches of private agreements must be sought in the courts, not this Department. Such matters are not within the jurisdiction of this Department. The proper function of this Department is to ascertain whether an applicant, such as Mrs. Han, meets the applicable statutory and regulatory requirements. Although Mrs. Han owns lands contiguous to the federal lands, she has failed to show, or even to allege, that she is in the livestock business and has a need for the grazing use of the land as required by 43 CFR 4121.1-1(a). We note that two decisions of this Department, Winchester Land and Cattle Company, 65 I.D. 148 (1958), and E. W. Davis, A-29889 (March 25, 1964), emphasized the necessity for applicants to show need for the public land to entitle them to a preference right for a section 15 grazing lease. They are correct in that regard. To the extent they indicated an applicant need not be in the livestock business to be qualified as an applicant for a lease, however, they are no longer controlling

precedent. The regulations then did not provide, as they now do, that a person be engaged in the livestock business. Compare 43 CFR 160.3(a) (1954) with 43 CFR 4121.1-1(a) (1972).

Therefore, the District Manager correctly rendered his decision on the basis of Mrs. Han's failure to show that she was a qualified applicant.

Mrs. Han's appeal also requests a hearing. This appeal has afforded her an opportunity to show error in the District Manager's decision. There are no statutory or regulatory procedures providing for a full evidentiary hearing before an administrative law judge as a matter of right for section 15 grazing lease applicants, although the regulations provide such a right to section 3 applicants. 43 CFR 4.470. However, under the general procedural regulations any party to an appeal may request, and the Board may, in its discretion, order a hearing to take evidence on an issue of fact. 43 CFR 4.415. Such a hearing is ordered only if there is a sufficient basis for doing so.

A person requesting a hearing must at least allege the existence of facts which, if proved, would entitle her to the relief sought before a hearing will be ordered. Clark Canyon Lumber Company, 9 IBLA 347, 80 I.D. 202 (1973); Elaine S. Stickelman,

9 IBLA 327 (1973). Appellant has failed to do so here. She has not alleged or offered to show that she is in the livestock business and needs the federal lands for grazing purposes. To be a qualified applicant for a grazing lease, such facts must be shown. The matters she has raised concerning attempts to lease her own lands to Mr. Darlington are not relevant. As we have discussed, if she had renewed her private lease with him, she would have lacked control over her preference lands and would not be entitled to a federal lease in any event. Laurence A. Andren, supra. Accordingly, the request for a hearing is denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the District Manager rejecting the application of Mrs. Ruth E. Han is affirmed.

Joan B. Thompson
Member

We concur:

Frederick Fishman
Member

Newton Frishberg
Chairman